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MASSACHUSETTS HAZARDOUS WASTE REGULATIONS 310 CMR 30.000

Response to Comments on Proposed RCRA Authorization Regulations

January 2004

Prepared by: ***The Commonwealth of Massachusetts***
Executive Office of Environmental Affairs
Department of Environmental Protection
Bureau of Waste Prevention
Business Compliance Division

Summary of Hearings and Keys Changes to Proposed Regulations

The Department held six hearings the week of October 6, 2003 on proposed amendments to the Massachusetts hazardous waste regulations. [See http://www.state.ma.us/dep/bwp/dhm/files/regs/hwphd.doc] Ten people submitted comments on the regulations. Many comments received expressed a concern that the rules for satellite accumulation of hazardous waste do not work well in university and laboratory settings. Commenters objected to one provision in particular requiring an inspection log in satellite accumulation areas. This requirement was only intended to apply to the main hazardous waste accumulation area, and was inadvertently cross-reverenced to satellite accumulation areas in the proposed regulations. The log requirement for satellite accumulation areas has therefore been deleted in the final version.

The final regulations also include revisions to the proposed public notice and comment requirements for the Class C Regulated Recyclable Materials permit process. See 310 CMR 30.296(3). After the October hearings, Department staff reevaluated its proposal to cross-reference the public notice and hearing requirements in the solid waste regulations at 310 CMR 19.033-19.039. The Department decided to insert the actual text of 19.033-19.039 at 310 CMR 30.296(3). This revised approach was chosen to improve clarity, minimize cross-referencing outside of 310 CMR 30.000, and to address some inconsistencies with terminology in the solid and hazardous waste regulations. The substantive requirements have not been changed from the proposed text. As with the original proposal, these new requirements will require a public notice comment period, facility fact sheet, distribution of the draft permit, a public hearing (if the Department wants one, one is requested by the applicant, or there is sufficient public interest), comment review and a summary response to comments.

Other changes made to the final regulations are mainly clerical in nature. Changes to the regulations are more fully described below. The target date for filing these regulations has tentatively been set for January 30, 2004, with an effective date of February 13, 2004.

Comments were received from:

American Ref-Fuel
Montvale, NJ

Capaccio Environmental Engineering, Inc.
Marlborough, MA

MIT
Environmental Programs Office
Cambridge, MA

Cape Cod Commission
Barnstable, MA

Edward N. Lewis, PE
Worthington, MA

Solutia
Springfield, MA

Harvard University, EH&S
Boston, MA

CleanVenture/CycleChem
Framingham, MA

Associated Industries of Massachusetts
Boston, MA

Northeastern University
Office of Environmental Health & Safety
Boston, MA

Summary of Comments

A. General

1. Comment: DEP should be commended for its efforts to improve the Hazardous Waste Regulations by making them more consistent with the federal program, streamlining the recycling program and improving the overall readability and clarity of the document.

Response: Comment noted.

2. Comment: The Department should adopt additional amendments that minimize differences between state and federal requirements. Specific example cited: exemption for on-site treatment.

Response: The regulatory review is an on-going process. Once this regulatory package is final, the Department will turn its attention to the next regulatory package, which may include amendments that would allow certain forms of treatment on-site by generators without a license.

3. Comment: Massachusetts-based industry cannot compete with other parts of the country due in part to excessive government regulation. Massachusetts needs to assess the content, value and role of its more stringent and broader-in-scope provisions.

Response: Minimizing the differences between state and federal hazardous waste program requirements was one of the goals of the regulatory development process for these rules.

4. Comment: According to the Department's public hearing draft, "these regulations are being updated to address analogous Federal RCRA requirements through at least July 1, 1990." Why is July 1, 1990 the cutoff date? Why not 2003?

Response: With a few exceptions, 1990 was the year the Department stopped adopting federal regulations. The Department decided it would seek authorization from EPA for the federal rules that are already part of 310 CMR 30.000 before adopting any new federal requirements.

5. Comment: The Department should allow a specific time period (i.e. one month) from the effective date of the amendments for generators to come into compliance with these amendments.

Response: While the Department is still considering a delayed effective date for these regulations, it is tentatively set for February 13, 2004. In the event that the effective date is delayed, a notice to that effect will be posted on the Department's website at www.state.ma.us/dep.

6. Comment: The Department should receive authorization for the proposed regulations and recognition from EPA that the Massachusetts program, while different, is broader in scope and more stringent than the federal program. Receiving authorization will allow Massachusetts to continue to be in the forefront of hazardous waste management.

Response: Massachusetts is receiving authorization for the proposed regulations in this package.

B. Definitions

1. Comment: The definition of Municipal Wastewater Treatment Unit (MWTU) should be kept simple and be defined as a unit permitted under state or federal Clean Water Act or NPDES.

Response: The proposed MWTU definition is consistent with the commenter's suggestions. The proposed definition will be promulgated without changes.

2. Comment: Regarding the "Empty Container" definition, the proposed standard of "no more than 0.3% by weight of the total capacity" for a container that is >110 gals in size" is not a feasible standard for larger containers, such as totes, when material is highly viscous. Comment directed at EPA's rule as much as DEP's, since the rules are one and the same.

Response: At this time, the Department is required to adopt the federal definition as it was proposed in the public hearing draft.

3. Comment: Proposed modifications to definitions pertaining to oil are confusing and hard to follow. Sorting through terms such as "used oil," "waste oil fuel," "off specification oil" is time-consuming for the regulated community and wastes taxpayer dollars for the Department to administer.

Response: Some of the rules pertaining to waste oil are admittedly complicated, and efforts were made in this regulatory package to improve their readability and clarity. However, the Department disagrees that that these terms "waste taxpayer dollars." The Department has regulated waste oil for over 30 years, and believes that the public health and safety of the Commonwealth has benefited from this program which as been effective at minimizing releases of waste oil to the environment.

4. Comment: The definition for "treatment which is an integral part of the manufacturing process" focuses on 'manufacturing' and doesn't address other forms of "non-manufacturing" treatment. Alternative wording would eliminate ambiguity of whether treatment is allowed pursuant to 310 CMR 30.000, and whether it can be done in a laboratory or other non-manufacturing process.

Response: This definition is analogous to the federal definition of a "totally enclosed treatment facility" (see 260.10), which refers to an "industrial production process." The Department evaluated the definition and determined that it does not need to be modified at this time, particularly since EPA has already approved it. For an example of "non-manufacturing" treatment that may be conducted at the site of generation without a license, refer to 310 CMR 30.353(6)(i). Also, see response to comment A.2. above.

C. Satellite Accumulation

1. Comment: Requiring weekly inspection logs (for recording every inspection, and maintaining records for three years) for satellite accumulation areas is onerous, particularly in a laboratory/university setting. [See 310 CMR 30.340(6), 30.351(4) and 30.353(6)(i)] A university may have thousands of satellite accumulation points. The Department should consider removing this requirement for satellite accumulation areas. A weekly inspection log requirement is unnecessary in a university setting for the following reasons:

-satellite accumulation areas generally use volumes far less than 55 gallons, often less than a gallon;
-the areas are by definition under the control of key staff personnel and monitored constantly;
-requirement is impractical and resource intensive considering how many satellite accumulations are present in a university setting;
-satellite accumulation areas are already inspected more than once a week so the log requirement might be counterproductive in that it could discourage more frequent, un-logged inspections;
-it is inconsistent with intent of satellite accumulation requirements and the promotion of adaptable environmental management systems (e.g. New England University Lab XL).

Response: The requirement for an inspection log was inadvertently cross-referenced to satellite accumulation areas and was only intended to apply to central hazardous waste accumulation areas. In the final rule, satellite accumulation areas will be subject to the weekly inspection requirement at 30.686, but will not be subject to the requirement to keep an inspection log at 30.342(1)(d)2.

2. Comment: DEP's rules for satellite accumulation, which allow only one container per waste stream, are too restrictive in a university lab environment. Preference is for DEP to implement the EPA interpretation, which allows multiple containers of a waste stream up to 55 gallons per satellite accumulation point. Because universities may have hundreds, even thousands of laboratories, it is difficult to efficiently schedule waste collection for such small quantities at so many locations. Commenter argues that the frequent movement of hazardous waste results in less environmental protection, since there are more chances for in-transit releases. Acceptable alternative would be to adopt EPA's satellite accumulation regulations which allow any number of containers up to 55-gallons of non-acutely hazardous waste and one quart of acutely hazardous waste. Another alternative the Department should consider is to allow several filled containers to remain in the satellite accumulation area for up to 30 days, similar to the NE University Labs XL Project. Commenter requests an allowance for university laboratories making it possible to have limited amounts of hazardous waste stored in laboratory satellite accumulation areas until an efficiently scheduled pickup (e.g. weekly or monthly) can be done to move these wastes to the main accumulation area.*)*

Response: The Department's satellite accumulation rule allows only one container (up to one 55-gallon) *per waste stream* at each satellite accumulation point. The EPA analog allows multiple, smaller containers of a waste stream, up to 55 gallons. While the state rule may be more stringent to universities that generate numerous, small containers of a waste stream, the same rule offers much-needed flexibility to larger industrial operations. There are no plans to change the Department's satellite accumulation approach at this time, however, the New England University Lab XL project does address this issue in part and is being extended to the year 2006 in this rulemaking. See 30.354. The Department is hopeful that the flexibility afforded by this XL project may be extended in the future beyond the current participating universities.

3. Comment: Proposed satellite accumulation regulations do not address the issue common to most laboratories and some high-tech manufacturing situations. This issue is that a lab or other production area may have a number of lab hoods or numerous setups of the same type analytical equipment in one physical area. Typically, each hood or piece of equipment would have a small (< 55 gallons) satellite container to accumulate waste. In most cases, each of these containers would be collecting the same waste stream. The regulations say a generator can only have one container of waste for each point of generation. In the laboratory scenario, does that mean that each hood or piece of analytical equipment can have a satellite accumulation container with a volume of up to 55 gallons of the same waste collected at other hoods/equipment? If not, DEP needs to further address the need for having multiple satellite accumulation containers of the same waste stream in the same physical area.

Response: In response to the question "does that mean that each hood or piece of analytical equipment can have a satellite accumulation container with a volume of up to 55 gallons of the same waste collected at other hoods/equipment?" the answer is yes, provided that all the applicable satellite accumulation requirements are met for each hood and piece of analytical equipment.

4. Comment: Satellite accumulation regulations do not appear to address a policy that we believe DEP has used in the past with respect to working containers. (Small containers of waste at each bench or work station that are emptied into one "satellite" container in the same physical area at the end of every shift.) Commenter believes that allowing the use of "working" containers has typically been applied to Massachusetts-regulated waste such as waste oil. Can this policy be added to the proposed changes and can it be extended to all hazardous waste.

Response: The commenter is correct that the Department allows for the use of working containers of waste oil, which is a state-only hazardous waste. However, USEPA does not recognize and will not authorize Massachusetts for a working container policy for federally-regulated hazardous wastes. Therefore, the Department has not included a working container allowance in its satellite accumulation rule.

5. Comment: Commenter expressed concerns about the "so-called three day rule" component of proposed satellite accumulation requirements, which stipulates that the generator must remove waste from the satellite accumulation area within three days of when a single container of a waste stream is filled or the quantity limit for a waste stream (55 gallons) is reached, whichever comes first. Commenter argues that this requirement is overly burdensome to colleges and

universities because laboratories typically generate hazardous waste in small containers and quantities.

Response: The three-day limit is a federal requirement the Department is required to include in its satellite accumulation rule in order to receive authorization from EPA.

D. Consistency with Federal Regulations

Comment: The Department's public hearing draft states "[a] majority of these State definitions are being amended slightly in order to make them identical to the federal definitions." Commenter states this is an excellent idea whose time is long in coming. For the sake of simplicity and the competitiveness of Massachusetts with other states, all definitions should have precisely the same meanings as those given in the Federal regulations. DEP should be lauded for this philosophy. Unless there is a truly compelling reason otherwise, all state regulations should be precisely the same as those in the federal regulations.

Response: The Department has made what it considers to be the appropriate number of changes to the definitions section at this time, and will evaluate whether additional changes are necessary in the future.

E. MGP Waste Exemption

Comment: The Department should further amend the Toxicity Characteristic (TC) rule by adopting the exemption for Manufactured Gas Plant (MGP) waste at 40 CFR 261.24 to be consistent with the federal code and to provide a cost-effective, in-state disposal option for this waste stream.

Response: The Department has no plans to adopt this optional exemption at this time, but may evaluate adopting it in the future.

F. Recycling Permits

Comment: Commenter strongly supports the proposal to streamline the recycling program by replacing recycling permits with performance standards. The DEP should be congratulated for this change that is consistent with numerous state and federal initiatives such as "Project XL" and the "Environmental Results Program."

Response: Comment noted.

G. More Stringent Provisions

Comment: While the Resource Conservation and Recovery Act (RCRA) requires that states adopt regulations that are at least as stringent as parallel federal regulations, Massachusetts has many regulations that are more stringent than those in the federal CFR. In today's economy, the value of "more stringent regulations" is subject to question. Massachusetts has to scrutinize its regulatory scheme if the state is expected to compete favorably with the other states and countries of the world.

Response: As part of this rulemaking process, the Department evaluated state-only requirements and made modifications where deemed appropriate.

H. Very Small Quantity Generators (VSQGs) – Acutely Hazardous Waste

Comment: Massachusetts prohibits VSQGs from generating or accumulating acutely hazardous wastes. Occasionally materials in storage become "acutely hazardous waste" upon disposal. The Department should amend its regulations to allow VSQG laboratories to occasionally generate <1 kg of acutely hazardous waste without triggering SQG status.

Response: There are no plans to change this state-only rule at this time. However, please note that under the University Lab XL Project (see 310 CMR 30.354), labs may defer waste determinations for such "materials in storage" until they have been collected at a central collection point at the university. As such, the "SQG trigger" for acutely hazardous waste wouldn't apply to the lab and could be deferred until the material was received in the central collection area.

I. Changes to Inspection and Entry Provisions

Comment: The Department proposes to modify regulations governing inspection and entry as follows: "[agents] may at any time enter such premises for the purpose of protecting the public health or safety, or to prevent damage to the environment." History has shown that this type of provision allowing carte blanche access is subject to abuse. Entering under the guise of "the environment" is open for misuse and exploitation. If immediate access is needed, the Department should get search warrants consistent with existing legal provisions. The Department should adopt inspection and entry regulations consistent with those found in the CFR.

Response: Although the Department does not agree with the comment, in order to avoid potential confusion, the Department has decided to remove the proposed inspection and entry text from 310 CMR 30.013.

The Department's inspection and entry authority is established in existing law and regulations. The Legislature vested the Department with broad entry and inspection powers because of the potential risks posed by activities subject to c. 21C to public health and safety and the environment. Specifically, the statute provides, in pertinent part, that:

> "Personnel or authorized agents of the department may at all reasonable times enter any premises, public or private, for the purpose of investigating, sampling or inspecting any records, condition, equipment, practice or property relating to activities subject to this chapter, and may at any time enter such premises for the purpose of protecting the public health or safety, or to prevent damage to the environment. For the purposes of such entries no warrant shall be required provided, however, that upon demand by the owner or person in control of such premises, a warrant authorizing such entry and inspection shall be sought after such demand." M.G.L. c. 21C, Section 8 (emphasis added).

This provision is generally applicable to any premises.

Existing requirements and conditions for Massachusetts hazardous waste licensees and permittees, however, may allow entry and inspection without a warrant. See, e.g., 310 CMR 30.822(6) and 310 CMR 30.205(6). Therefore, in order to avoid potential confusion, the proposed entry and inspection text will be dropped from 310 CMR 30.013.

The Department's entry and inspection authority is consistent with and equivalent to the federal provisions.

J. Wastes Subject to Exemption from Regulation: Recycling

Comment: The Department states that "waste managed in a completely enclosed recycling system [and] treatment that is integral to an industrial production process" is exempt. Following this regulatory citation through the definitions is confusing. What is the purpose of all of these "completely enclosed" and "integral" provisions? The regulations should be written to promote recycling, not discourage it. Commenter suggests that waste recycled at the site of generation should be exempt from regulation.

Response: The Department exempts from licensing "treatment of waste that is in a completely enclosed system" or "in an integral part of the manufacturing process." The reason for this exemption is that the likelihood of a release of hazardous waste from such systems is minimized significantly. Regarding the status of waste recycled at the site of generation, the Department is eliminating the Class A permit requirement for such activities, and replacing it with performance standards. See 310 CMR 20.220.

K. Exemptions: Laboratories Conducting Treatability Studies

Comment: "Laboratories conducting treatability studies… must have approval from DEP." For the DEP to insert itself into the management of a facility is burdensome for the facility and an unwise use of limited government resources.

Response: The Department has not and is not proposing to "insert[ing] itself into the management" of laboratories conducting treatability studies. The Department "approval" referred to by the commenter, at 310 CMR 30.104(3)(c), is part of the existing application process and is not new. Changes to the treatability study regulations were made to bring the state requirements for this conditional exemption more in line with the federal program.

L. Manifesting

1. Comment: There appears to be no compelling reason for any state to have manifesting regulations that differ from those issued by the EPA and the Department of

Transportation/Research and Special Programs Administration. As long as waste is transported under a federal manifest, the safety of transportation is assured.

Response: Historically, the Department's requirements pertaining to hazardous waste transportation, and manifesting in particular, have been more stringent than analogous federal requirements. However, these amendments to the manifest regulations were limited mainly to clarifying and reorganizing the requirements, not to streamline them.

2. Comment: 310 CMR 30.312 specifically limits the use of the four-part manifest; 310 CMR 30.312(6) seems to contradict or confuse these limits by stating that a Massachusetts generator sending waste to a Massachusetts facility may use the four-part manifest. Further clarification would be appropriate.

Response: The commenter correctly identified inadvertent discrepancies in the proposed revisions to 310 CMR 30.312, which are being corrected at 310 CMR 30.312(3) and 310 CMR 30.312(6) to read as follows:

310 CMR 30.312

(1)....(2)

(3) A ~~Small Quantity Generator or Large Quantity~~ Generator of waste oil may use the four part manifest form in compliance with 310 CMR 30.311, 30.312 and 30.316 ***for intrastate shipments instead of the eight part manifest form.***
(4)…(5)
(6) A ~~Massachusetts~~ ***Very Small Quantity*** *Generator sending hazardous waste to a Massachusetts facility may use the four part manifest form in compliance with 310 CMR 30.311, 30.312 and 30.316 instead of the eight part manifest form.*

M. Miscellaneous Notes Regarding Status Determinations

Comment: Massachusetts disallows generators from using rolling averages of waste generation when determining their generation status, but has historically allowed letters explaining one-time high generation that results from cleanouts. What is the concern with using a rolling average provision? The regulated community has found this to be a confusing and unnecessary regulation.

Response: EPA does not allow rolling averages under the federal regulations, and therefore the Department may not adopt such a provision.

N. New or revised requirements in 30.341

Comment: Terms such as "owner or operator" as well as "facility" have been replaced with "site." This is a step in the right direction. It eliminates the unnecessary distinction between owners, operators or facilities and sites. DEP should be lauded for this proposed change.

Response: Comment noted.

O. Adoption of federal air emissions standards for process vents

Comment: Why is the Department not planning to adopt the Organic Air Emissions (OAE) rule for LQGs at this time?

Response: The Department does not have the resources to administer the OAE rule at this time.

P. University Lab XL

Comment: EPA should extend authorization of the Department's University Lab XL program as proposed.

Response: The program is being extended in this regulatory package. See 310 CMR 30.354.

Q. Mixed Waste

Comment: Does the Department have plans to adopt the federal Mixed Waste exemption at 40 CFR 261.3 (h)? [See 66 *Federal Register* 27297]

Response: The Department will evaluate the federal rule and consider the possibility of adopting this rule in state fiscal year 2005, which starts on July 1, 2004.